



**HOUSING AUTHORITY  
of the County of Los Angeles**

Administrative Office

2 Coral Circle • Monterey Park, CA 91755

323.890.7001 • TTY: 323.838.7449 • www.lacdc.org



**Gloria Molina**  
**Mark Ridley-Thomas**  
**Zev Yaroslavsky**  
**Don Knabe**  
**Michael D. Antonovich**  
*Commissioners*

**Sean Rogan**  
*Executive Director*

September 8, 2009

**ADOPTED**

BOARD OF COMMISSIONERS  
HOUSING AUTHORITY

Honorable Board of Commissioners  
Housing Authority of the  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

3-H

SEPTEMBER 8, 2009

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

Dear Commissioners:

**APPROVE CONSTRUCTION CONTRACT FOR ELEVATOR MODERNIZATION AT  
THE CARMELITOS SENIOR HOUSING DEVELOPMENT IN THE CITY OF LONG  
BEACH (DISTRICT 4) (3 VOTE)**

**SUBJECT**

This letter recommends approval of a construction contract with M.L. Construction to complete the modernization of two elevators at the Carmelitos senior housing development in Long Beach.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that the elevator modernization project at the Carmelitos senior housing development is exempt from the provisions of the California Environmental Quality Act (CEQA) because the work includes activities that will not have the potential for causing a significant effect on the environment.
2. Award and authorize the Executive Director to execute, administer, implement, and if necessary, terminate a contract in the amount of \$354,400 to M.L. Construction to complete the modernization of two elevators at the Carmelitos senior housing development, following approval as to form by County Counsel.
3. Authorize the Executive Director to fund the contract with a total of \$318,945 in Community Development Block Grant-Recovery (CDBG-R) funds and \$35,455 in Countywide Community Development Block Grant



(CDBG) funds allocated by the U.S. Department of Housing and Urban Development (HUD) and included in the Housing Authority's approved Fiscal Year 2009-2010 budget for this purpose; and authorize the Executive Director to approve contract change orders not to exceed \$70,880 for unforeseen project costs, using Countywide CDBG funds.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of this action is to award a contract for elevator modernization at the Carmelitos senior housing development.

### **FISCAL IMPACT/FINANCING**

There is no impact on the County general fund. The improvements will be funded with a total of \$318,945 in CDBG-R funds and \$35,455 in Countywide CDBG funds allocated by HUD and included in the Housing Authority's approved Fiscal Year 2009-2010 budget. A 20% contingency, in the amount of \$70,880, is also being set aside for unforeseen costs, using Countywide CDBG funds.

A 20% contingency is recommended because elevator construction work often involves unforeseen conditions that extend further than initially identified in the scope of work.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The 155-unit Carmelitos senior housing development is located at 761 Via Carmelitos in Long Beach. The scope of work for the elevator modernization includes all accessories, electrical, plumbing, waterproofing, fire alarm, fire sprinklers, drywall, painting, and all other related work. It is anticipated that the entire project will be completed within 240 calendar days following the Notice to Proceed.

The improvements are being federally funded, and are not subject to the requirements of the Greater Avenues for Independence (GAIN) Program or the General Relief Opportunity for Work (GROW) Program implemented by the County of Los Angeles. Instead, M.L. Construction will comply with Section 3 of the Housing and Community Development Act of 1968, as amended, which requires that employment and other economic opportunities generated by certain HUD assistance be directed to low- and very low-income persons, particularly to persons who are recipients of HUD housing assistance.

The Housing Authority has selected M.L. Construction to complete the modernization of two elevators. The contract has been approved as to form by County Counsel and executed by M.L. Construction. On August 26, 2009, the Housing Commission recommended approval of the contract award.

### **ENVIRONMENTAL DOCUMENTATION**

Pursuant to 24 Code of Federal Regulation, Part 58, Section 58.35 (a)(3)(ii), this project is excluded from the National Environmental Policy Act because it involves activities that will not alter existing environmental conditions. It is exempt from the provisions of CEQA, pursuant to State CEQA Guidelines 15301, because it involves negligible or no expansion of use beyond what currently exists and does not have the potential for causing a significant effect on the environment.

### **CONTRACTING PROCESS**

On June 18, 2009, the Housing Authority initiated an outreach to identify a contractor to complete the work at the subject property. Invitations for Bids were mailed to 630 contractors identified from the Housing Authority's vendor list. Advertisements also appeared in eight newspapers and on the County Web Site. Four bid packages were requested and distributed.

On July 14, 2009, two bids were received and formally opened. The lowest bid, submitted by Tobo Construction Inc., was withdrawn by the contractor. M.L. Construction was determined to be the most responsive bidder and is being recommended for the contract award

The Summary of Outreach Activities is provided as Attachment A.

### **IMPACT ON CURRENT PROJECT**

The award of the Contract will modernize and preserve the senior housing development in a decent, safe, and sanitary condition for its residents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean Rogan", followed by a horizontal line.

SEAN ROGAN  
Executive Director

Attachments: 2

## ATTACHMENT A

### Summary of Outreach Activities

Construction Contract for Elevator Modernization project to meet requirements of the American with Disabilities Act at the Carmelitos senior housing development in the City of Long Beach.

On June 18, 2009, the following outreach was initiated to identify a contractor to complete an elevator modernization project to meet the requirements of the American with Disabilities Act at the Carmelitos senior housing development located at 761 Via Carmelitos, Long Beach, CA 90805.

#### A. Newspaper Advertising

Announcements appeared in the following eight local newspapers:

Los Angeles Times	Dodge Construction News/Green Sheet
Los Angeles Sentinel	Eastern Group Publications
International Daily News	L.A. Sentinel
La Opinion	
WAVE Community Newspapers-Zone Long Beach Area only	

An announcement was also posted on the County Web Site.

#### B. Distribution of Bid Packages

The Housing Authority's vendor list was used to mail out Invitations for Bids to 630 contractors, of which 445 identified themselves as businesses owned by minorities or women (private firms which are 60 percent owned by minorities or women, or publicly-owned businesses in which 56 percent of the stock is owned by minorities or women). As a result of the outreach, four bid packages were requested and distributed.

#### C. Pre-Bid Conference and Site Walk

On June 30, 2009, a mandatory pre-bid conference and site walk was conducted. Nine firms were in attendance.

#### D. Bid Results

On July 14, 2009, two bids were received and publicly opened. The bid result was as follows:

<u>Company</u>	<u>Bid Amount</u>
Tobo Construction Inc.	\$306,070.00
M.L. Construction	\$354,400.00

E. Minority/Female Participation – Selected Contractor

<u>Name</u>	<u>Ownership</u>	<u>Employees</u>
M.L. Construction	Non-Minority	Total: 17 6 minorities 1 women 28% minorities 4% women
Superior Alliance Elevator (Elevator Sub-contactor)	Non-Minority	Total: 16 2 minorities 2 women 12.5% minorities 12.5% women

F. Minority/Women Participation - Firms Not Selected

<u>Name</u>	<u>Ownership</u>	<u>Employees</u>
Tobo Construction Inc.	Minority	Total: 10 10 Minorities 1 Woman 100% minorities 10% women

The Housing Authority conducts ongoing outreach to include minorities and women in the contract award process, including: providing information at local and national conferences; conducting seminars for minorities and women regarding programs and services; advertising in newspapers to invite placement on the vendor list; and mailing information to associations representing minorities and women. The above information has been voluntarily provided to the Housing Authority.

The recommended award of the contract is being made in accordance with the Housing Authority's policies and federal regulations, and without regard to race, creed, color, or gender.

## ATTACHMENT B

### Contract Summary

**Project Name:** Carmelitos Elevator Modernization project.  
**Location:** 761 Via Carmelitos, Long Beach, CA 90805  
**Bid Number:** CDC-09-103  
**Bid Date:** July 14, 2009  
**Contractor:** M.L. Construction.  
**Services:** Elevator Modernization project of three-story residential buildings

**Contract Documents:** Part A – Instructions to Bidders and General Conditions; Part B – Specifications; Part C – Bidder's Documents, Representations, Certifications, Bid, and Other Statements of Bidder; all addenda to the Contract Documents.

**Time of Commencement and Completion:** The work to be performed under this Construction Contract shall be commenced within thirty (30) days after a Notice to Proceed is received by the Contractor, or on the date specified in the Notice, whichever is later, and shall be completed within two hundred forty (240) calendar days following the required commencement date.

**Liquidated Damages:** In the event of breach of contract, the Contractor and his/her sureties shall be liable for, and shall pay to the Housing Authority the sum of **Five Hundred Dollars and Zero Cents (\$500.00)** as liquidated damages for each calendar day of delay, until the Work is accepted by the Owner.

**Contract Sum:** The Housing Authority shall pay the Contractor for the performance of the Construction Contract subject to additions and deductions by Change Order(s) as provided in the Contract Documents, in current funds, the sum of **Three Hundred Fifty Four Thousand Four Hundred Dollars and Zero Cents (\$354,400)**. The Contract Sum is not subject to escalation, includes all labor and material increases anticipated throughout the duration of this Construction Contract.

Contract Contingency: **\$70,880**

**HOUSING AUTHORITY  
OF THE COUNTY OF LOS ANGELES**

**CONSTRUCTION CONTRACT**

**FOR**

**CARMELITOS ELEVATOR MODERNIZATION PROJECT**

**761 AND 817 VIA CARMELITOS  
LONG BEACH, CA 90805**

**BID NUMBER CDC09-103**

**BID DUE DATE: JULY 14, 2009 AT 2:00 P.M.**

**HOUSING AUTHORITY OF THE  
COUNTY OF LOS ANGELES**

**CONSTRUCTION CONTRACT**

This CONSTRUCTION CONTRACT (or "Contract") is made this \_\_\_\_ day of September 2009 by and between the **Housing Authority** of the County of Los Angeles, a body corporate and politic, hereinafter referred to as the "**Authority**" or the "**Owner**", and ML Construction, hereinafter referred to as the "**Contractor**".

WITNESSETH, that the Owner and the Contractor, for the consideration stated herein, mutually agree as follows:

- A. The Authority is the Owner of that certain real property, commonly known as 761 and 817 Via Carmelitos housing developments in Long Beach, California, 90805 hereinafter referred to as the "Property".
- B. The term "Work" includes performance, as set forth in the Contract Documents by the Contractor, for all improvement work on, in and about the Properties.
- C. Owner desires the Contractor to perform the Work on the terms and conditions hereinafter set forth, and Contractor agrees to perform said Work on terms and conditions set forth below.

ARTICLE 1  
THE CONSTRUCTION CONTRACT

- 1.1 The Construction Contract means and includes all of the "Contract Documents". The Contract Documents which form the Construction Contract are incorporated herein by this reference and are made a part of this Construction Contract as if fully set forth herein. The Contract Documents consist of the following component parts:

PART A	Instructions to Bidders and General Conditions
PART B	Specifications
PART C	Bidder's Documents, Representations, Certifications, Bid, and Other Statements of Bidder

Any addenda to the above Contract Documents

ARTICLE 2  
STATEMENT OF WORK

- 2.1 Contractor agrees to perform in a professional manner, to the satisfaction of the Authority's Executive Director, all work described in the Contract Documents hereinbefore mentioned.
- 2.2 The Contractor shall furnish all labor, material, equipment and services and perform and complete all Work required for the project identified as Bid No. CDC-09-103. All such Work shall be in strict accordance with the Specifications and Drawings, identified as Part B, all as prepared by IDS Group Inc.



- 2.3 Data provided in the Specifications and Drawings are believed to actually depict the conditions to be encountered by the Contractor, but Owner does not guarantee such data as being all-inclusive or complete in any respect. Nothing contained herein shall relieve Contractor from making any and all investigations through non-destructive observations of the Property which are reasonably necessary to apprise him/herself of the condition of the Property. Contractor hereby accepts the project in an "as is" condition and herein warrants that all such investigations have been performed by him/her, and hereby expressly waives any and all rights under this Construction Contract, or in law, to additional compensation and/or time adjustments for alleged unknown subsurface and/or latent conditions that could be reasonably discovered or inferred based upon standard industry construction practices and techniques.

### ARTICLE 3 TIME OF COMMENCEMENT AND COMPLETION

- 3.1 The Work to be performed under this Construction Contract shall be commenced within ten (10) days after a Notice to Proceed is received by the Contractor, or on the date specified in the Notice, whichever is later, and shall be completed within Two Hundred Forty (240) calendar days following the required commencement date.
- 3.2 The Contractor and the Owner agree that, since the determination of actual damages for any delay in completion would be extremely difficult or impracticable to determine in the event of breach of contract, the Contractor and his/her sureties shall be liable for, and shall pay to the Owner the sum of Five Hundred Dollars (\$500.00) as liquidated damages for each calendar day of delay, until the Work is accepted by the Owner. The Contractor shall not be charged with liquidated damages because of any delay in the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor.

The Owner may withhold, or cause to be withheld, from any monies payable on account of Work performed by the Contractor or subcontractor any accrued liquidated damages, amounts necessary to cover stop notices or alleged labor under payments.

### ARTICLE 4 CONTRACT SUM

- 4.1 The Owner shall pay the Contractor for the performance of the Construction Contract subject to additions and deductions by Change Order(s) as provided in the Contract Documents, in current funds, the sum of THREE HUNDRED FIFTY FOUR THOUSAND FOUR HUNDRED DOLLARS AND ZERO CENTS (\$354,400.00). The Contractor represents and warrants that he/she shall pay his/her employees, and all individuals performing Work, not less than the prescribed minimum wages in accordance with the current Prevailing Wage Determination published by the Department of Labor.
- 4.2 The Contract Sum set forth herein includes the payment by Contractor of all sales and use taxes required by any local codes, or any law existing or which may hereafter be adopted by federal, state or governmental authority, taxing the materials, services required or labor furnished, and of any other tax levied by reason of the Work to be performed hereunder.
- 4.2 The Contract Sum is not subject to escalation, the Contractor having satisfied himself with said Contract Price, which includes all labor and material increases anticipated throughout the duration of this Construction Contract.

- 4.3 The Owner's obligation is payable only and solely from funds appropriated from the United States Department of Housing and Urban Development (HUD) and for the purpose of this Contract. All funds are appropriated every fiscal year beginning July 1.
- 4.4 In the event this Contract extends into the succeeding fiscal year and funds have not been appropriated, this Contract will automatically terminate as of June 30 of the current fiscal year. The Owner will notify the Contractor in writing in ten (10) days of receipt of the non-appropriation notice.

#### ARTICLE 5 PROGRESS PAYMENTS

- 5.1 Based upon applications for payment submitted by the Contractor to the Owner, and after approval by the Construction Management Division, the Owner shall make progress payments on account of the Contract Sum to the Contractor, as provided in the Instruction to Bidders of the Construction Contract.
- 5.2 Approved applications for progress payments will be paid by the thirtieth day of each month, provided that application for payment has been submitted to the Owner on or before the first working day of the month. Payment shall be subject to all provisions of Section 01003 paragraphs 3.03.A. and B. of the Instructions to Bidders incorporated by reference into the Contract.
- 5.3 The Contractor and each Subcontractor shall submit all required Labor Compliance forms to the Housing Authority before the start of construction. The Contractor shall submit to the Housing Authority all of its payrolls for each pay period within seven (7) days after the pay period has ended. The Contractor shall also collect, review and submit to the Housing Authority all of its subcontractors' payrolls for each pay period within seven (7) days after the pay period has ended. Contractor's failure to submit its payrolls or any subcontractor payrolls within seven (7) days after the pay period has ended, is a violation of this contract and entitles the Housing Authority to withhold up to ten percent (10%) from any pending progress payment until all such payrolls are received. Repeated ongoing or flagrant failures by the contractor to submit the required forms, its payrolls or the payrolls of its subcontractors in a timely manner and in accordance with this provision constitutes a material breach of this contract which may result in the Housing Authority terminating the contract for default.

#### ARTICLE 6 PROJECT CLOSEOUT

- 6.1 Prior to occupancy of any dwelling unit, building, or other portion of the project, the Owner shall receive a certificate from the Contractor that such portion of the project is ready for occupancy, and shall cause a Notice of Completion to be issued. A Notice of Completion shall be issued only when the Work, including all phases thereof, is finally completed, and all requirements of this Construction Contract have been satisfied. The Owner shall cause the Notice of Completion to be recorded with the County Recorder.
- 6.2 Upon Issuance of a Notice of Completion, final payment shall be made to the Contractor of the entire unpaid balance of the Contract Sum, including any sums due to the Contractor for changes in the Work approved by the Owner pursuant to Section 01003 paragraph 3.03.E. of the Instruction to Bidders, less any amounts which Owner is entitled to receive from the Contractor under the terms of this Contract or amounts necessary to cover stop notices or

alleged labor under payments, and less the ten percent (10%) retention withheld, pursuant to Section 01003 paragraph 3.03.F. of the Instruction to Bidders.

- 6.3 In addition to all other requirements, a Notice of Completion shall be issued only when Owner has received the following:
- A. A Certificate of Completion, executed by Owner.
  - B. All guarantees and warranties issued by the manufacturers or installers of equipment or other component parts of the project. Contractor guarantees that the equipment, materials, and workmanship, not otherwise covered by a guarantee or warranty, will be free from defects in materials and workmanship for a period of one (1) year following date of final acceptance of the project.
  - C. The waiver and release of all liens, claims of liens, or stop notice rights of the Contractor and all sub-contractors, and the Contractor's Certificate and Release.
  - D. Verification from the Architect that Contractor has removed all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the project site. If the Contractor has failed to remove any of such items, the Owner may remove such items, and the Contractor shall pay the Owner for all cost incurred in connection with such removal.

- 6.4 After recordation of the Notice of Completion, and expiration of the thirty-day period for filing of stop notices, the Owner shall use reasonable efforts to settle all claims and disputes, notify the Contractor of final acceptance of the project, and make final payment of the entire unpaid balance of the Contract Sum, including the ten percent (10%) retention, less any amounts which the Owner is entitled to receive from the Contractor under the terms of this Construction Contract, including liquidated damages, and less amounts necessary to cover stop notices or alleged labor underpayments.

## ARTICLE 7 BREACH AND TERMINATION

- 7.1 Waiver by the Owner of any breach of this Construction Contract shall not constitute a waiver of any other breach or of any future breach. No payment made hereunder shall be construed to be an acceptance of defective work or improper materials.
- 7.2 In addition to any right of termination reserved to the Owner by Section 01003 paragraph 3.10.A. of the Instruction to Bidders of the Construction Contract, the Owner may terminate this Construction Contract or performance under this Construction Contract, if the Contractor is adjudged bankrupt, a receiver is appointed because of the Contractor's insolvency, or the Contractor makes a general assignment for the benefit of its creditors, fails to make prompt payment to subcontractor(s), or for material or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, fails to construct the project in accordance with the Drawings and Specifications, or otherwise substantially violates any provision of the Contract Documents.
- 7.3 The Owner shall give the Contractor and his surety written notice prior to terminating this Construction Contract or performance under this Construction Contract, pursuant to Section

01003 paragraph 3.10.A. of the Instruction to Bidders, provided that the Contractor shall, upon receipt of such notice, immediately stop the installation of improvements, or other permanent construction work encompassing part of the project. Upon termination, the Owner may take possession of the project and all materials, equipment, tools, and construction equipment and machinery owned by the Contractor and located at the project site, and may finish the project by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment under this Construction Contract.

7.4 The Owner shall not be deemed to have waived any of its other rights or remedies against the Contractor by exercising its right of termination under this Article.

7.5 Termination for Cause: This Contract may be terminated by the Authority upon written notice to the Contractor for cause (failure to perform satisfactorily any of the Contract terms, conditions, and work items) with no penalties upon termination or upon the occurrence of any of the following events:

A. Continuing failure of the Contractor to perform any work required to be performed hereunder in a timely and professional manner, or Contractor is not properly carrying out the provisions of the Contract in their true intent and meaning, then in such case, notice thereof in writing will be served upon the Contractor; and should the Contractor neglect or refuse to provide a means for a satisfactory compliance with this Contract and with the direction of the Authority within the time specified in such notices, the Authority shall have the power to suspend the performance of this Contract by Contractor in whole or in part.

B. Failure on the part of the Contractor to procure or maintain insurance required by this Contract shall constitute a material breach of contract upon which the Authority may immediately terminate this Contract.

C. Should the Contractor fail within five (5) days to perform in a satisfactory manner, in accordance with the provisions of this Contract, or if the work to be done under said Contract is abandoned for more than three (3) days by the Contractor, then notice of deficiency thereof in writing will be served upon the Contractor. Should the Contractor fail to comply with the terms of said Contract within five (5) days, upon receipt of said written notice of deficiency, the Executive Director of the Authority shall have the power to suspend or terminate the operations of the Contractor in whole or in part.

D. In the event that a petition of bankruptcy shall be filed by or against the Contractor.

E. If, through any cause, the Contractor shall fail to fulfill, in a timely and proper manner, the obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the Authority shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor under this Contract shall, at the option of the Authority become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed.

- 7.6 Termination for Improper Consideration: The Authority may, by written notice to the Contractor, immediately terminate the right of the Contractor, to proceed under this Construction Contract if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any Authority officer, employee or agent with the intent of securing the Contract or securing favorable treatment with respect to the award, amendment or extension of the Contract or the making of any determinations with respect to the Contractor's performance pursuant to the Contract. In the event of such termination, the Authority shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

The Contractor shall immediately report any attempt by the Authority officer or employee to solicit such improper consideration. The Report shall be made to the Authority's Executive Director or designee.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

- 7.7 Termination for Convenience: The Authority reserves the right to cancel this Contract for any reason at all upon thirty (30) days prior written notice to Contractor. In the event of such termination, Contractor shall be entitled to a prorated portion paid for all satisfactory work unless such termination is made for cause, in which event, compensation if any, shall be adjusted in such termination.
- 7.8 The Authority's Quality Assurance Plan: The Authority will evaluate Contractor's performance under this Contract on not less than a quarterly basis. Such evaluation will include assessing Contractor's compliance with all Contract terms and performance standards. Contractor deficiencies which the Authority determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Commissioners. The report will include improvement/corrective action measures taken by the Authority and the Contractor. If improvement does not occur consistent with the corrective action measures, the Authority may terminate this Contract or pursue other penalties as specified in this Contract.
- 7.9 Non-payment after expiration or termination: Contractor shall have no claim against the Authority for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this Agreement. Should Contractor receive any such payment, it shall immediately notify the Authority and shall immediately repay all such funds to the Authority. Payment by the Authority for services rendered after expiration/termination of this Agreement shall not constitute a waiver of the Authority's right to recover such payment from Contractor. This provision shall survive the expiration or other termination of this Agreement.

## ARTICLE 8

### MISCELLANEOUS PROVISIONS

- 8.1 Contractor shall give all notices and comply with all laws, rules, regulations, ordinances and orders of any governmental entity relating to the Work. Should Contractor become aware that any provision of the Construction Contract is at variance with any such rule, law, regulation, ordinance or order, he shall promptly give notice in writing to the Owner of such variance.

- 8.2 It is hereby declared to be the intention of the parties that the sections, paragraphs, sentences, clauses and phrases of this Construction Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Construction Contract shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or un-enforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Construction Contract.
- 8.3 Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of difference between Drawings and Specifications, the Specifications shall govern. In case of discrepancy within the Drawings, or within the Specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination by the Contracting Officer shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

#### ARTICLE 9 CONTRACTOR APPROVAL

- 9.1 Contractor's Warranty of Adherence to Authority's Child Support Compliance Program  
Contractor acknowledges that the Authority, has established a goal of ensuring that all individuals who benefit financially from County or Authority through contracts are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

As required by the Authority's Child Support Compliance Program and without limiting Contractor's duty under this Contract to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and shall during the term of this Construction Contract maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

- 9.2 Termination For Breach of Warranty to Maintain Compliance with Authority's Child Support Compliance Program  
Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 9.1, "Contractor's Warranty of Adherence to Authority's Child Support Compliance Program" shall constitute a default by Contractor under this Contract. Without limiting the rights and remedies available to the Authority under any other provision of this Contract, failure to cure such default within ninety (90) days of notice by the Los Angeles County Child Support Services Department (CSSD) shall be grounds upon which the Authority Board of Commissioners may terminate this Agreement pursuant to Paragraphs under 7.5.

- 9.3 Post L. A.'s Most Wanted Parents List

Contractor acknowledges that the Authority places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Contractor understands that it is the Authority's policy to encourage the Authority contractors to voluntarily post County's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent position at Contractor's place of business. District Attorney will supply Contractor with the poster to be used.

ARTICLE 10  
ADDITIONAL PROVISIONS

- 10.1 This Construction Contract and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.
- 10.2 This Construction Contract contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or contracts between the parties relative to the subject matters hereof shall be superseded hereby and have no further force and effect.
- 10.3 No consent or waiver, expressed or implied, by either party to or of any breach or default by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.
- 10.4 Contractor shall procure and maintain insurance at Contractor's expense for the duration of this Contract from an insurance company that is admitted to write insurance in California or that has a rating of or equivalent to A:VIII by A. M. Best & Company. Any deviation from this rule shall require specific approval by the Authority:

- A. GENERAL LIABILITY INSURANCE (written on ISO policy form CG 00 01 or it's equivalent) with limits of not less than the following:

General Aggregate	\$2,000,000
Products/ Completed Operations Aggregate	\$1,000,000
Each Occurrence	\$1,000,000

This insurance shall include, or separate insurance shall be secured with a minimum limit of one million dollars (\$1,000,000) to cover the defense of and liability for bodily injury, disease or illness including death, or property damage arising in whole or in part out of the removal, repair, handling, or disposal of asbestos and/or lead containing materials.

- B. WORKERS' COMPENSATION and EMPLOYER'S LIABILITY insurance providing workers' compensation benefits, as required by the Labor Code of the State of California. In all cases, the above insurance shall include Employer's Liability coverage with limits of not less than the following:

Each Accident	\$1,000,000
Disease-Policy Limit	\$1,000,000

- C. AUTOMOBILE LIABILITY INSURANCE (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than one million dollars (\$1,000,000) for each incident. Such insurance shall include coverage of all "owned", "hired", and "non-owned" vehicles, or coverage for "any auto."

The Authority, the Community Development Commission of the County of Los Angeles ("Commission"), the County, and their officers, employees, agents and representatives shall be named as additional insureds for general liability.

Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party or reduced in coverage or limits, except after thirty (30) days' prior written notice to the Authority, and shall be primary and not contributing to any other insurance or self-insurance maintained by the Authority.

Any self-insurance program of self-insured retention must be separately approved in writing by the Authority.

Contractor shall deliver to the Authority certificates of insurance and original endorsements for approval as to sufficiency and form prior to the start of performance hereunder. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Such insurance as required herein shall not be deemed to limit Contractor's liability under this Contract.

The Authority reserves the right to require complete certified copies of all said policies at any time. Any modification or waiver of the insurance requirements herein shall only be made with the written approval of the Authority's Risk Manager or designee.

#### 10.5 Compliance With Laws

The Contractor agrees to be bound by applicable federal, state and local laws, regulations, and directives as they pertain to the performance of this Contract. This Contract is subject to and incorporates the terms of the Housing and Community Development Act of 1974, as amended by the Cranston-Gonzalez National Affordable Housing Act, 1990, and the 24 CFR Part 85. If the compensation under this Contract is in excess of \$100,000 then Contractor shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 18579(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR part 15).

The Contractor must obtain and present all relevant state and local insurance, training and licensing pursuant to services required within this Contract.

Contractor shall comply with the following laws:

##### Civil Rights Act of 1964, Title VI (Non-discrimination in Federally Assisted Programs)

Title VI provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

##### Section 109 of the Housing and Community Development Act of 1974



No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973

No person in the United States shall be excluded from participating in, be denied the benefits of, or be subjected to discrimination under this Contract on the basis of age or with respect to an otherwise qualified disabled individual.

Executive Order 11246 and 11375, Equal Opportunity in Employment (Nondiscrimination in Employment by Government Contractors, Subcontractors, and Contractors)

During the performance of this Contract, the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination/rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided to the agency contracting officer, advising the labor union or workers' representatives of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulation and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by the Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of the contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in the Executive Order and such other sanctions may be imposed and remedies invoked as provided in the Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the provisions of these paragraphs in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### Federal Prevailing Wage Requirements

This construction project is funded in whole or in part with Federal funds. Federal Labor Standard Provisions, including prevailing wage requirements of the Davis- Bacon and Related Acts (DBRA) will be enforced. The applicable wage determination for this project is General Wage Decision 26- dated CA80028, Modification 07/03/2009

#### Section 3 of the Housing and Community Development Act of 1968, as Amended

requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

- A. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this Contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining Contract or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or

knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

#### Lobbyist Ordinances

- A. Federal Lobbyist Requirements: The Contractor is prohibited by the Department of Interior and Related Agencies Appropriations Act, known as the Byrd Amendments, and HUD's 24 CFR Part 87, from using federally appropriated funds for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, loan or cooperative agreement, and any extension, continuation, renewal, amendment or modification of said documents.

The Contractor must certify in writing on the Federal Lobbyist Requirements Certification form that it is familiar with the Federal Lobbyist Requirements and that all persons and /or subcontractors acting on behalf of the Contractor will comply with the Lobbyist Requirements.

Failure on the part of the Contractor or persons/subcontractors acting on behalf of the Contractor to fully comply with the Federal Lobbyist Requirements shall be subject to civil penalties.

#### 10.6 Access and Retention of Records

The Contractor shall provide access to the Authority, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor is required to retain the aforementioned records for a period of five years after the grantee pays final payment and other pending matters are closed.

10.7 Conflict of Interest

The Contractor represents, warrants and agrees that to the best of its knowledge, it does not presently have, nor will it acquire during the term of this Contract, any interest direct or indirect, by contract, employment or otherwise, or as a partner, joint venturer or shareholder (other than as a shareholder holding a one percent (1%) or less interest in publicly traded companies) or affiliate with any business or business entity that has entered into any contract, subcontract or arrangement with the Authority. Upon execution of this Contract and during its term, as appropriate, the Contractor shall disclose in writing to the Authority, any other contract or employment during the term of this Contract by any other persons, business or corporation in which employment will or may likely develop a conflict of interest between the Authority's interest and the interests of the third parties.

10.8 Indemnification

Contractor agrees to indemnify, defend and hold harmless the Public Agencies and their Agents from and against any and all liability, demands, damages, claims, causes of action, fees (including reasonable attorney's fees and costs and expert witness fees), and expenses, including, but not limited to, claims for bodily injury, property damage, and death (hereinafter collectively referred to as "Liabilities"), that arise out of, pertain to, or relate to this Contract, the Contract Documents, the services and/or materials provided pursuant to this Contract, the Work, or the Property. Contractor shall not be required to indemnify, defend, and hold harmless the Public Agencies and their Agents from any Liabilities that arise from the active negligence, sole negligence or willful misconduct of the Public Agencies, Public Agencies' agents, servants, or independent contractors who are directly responsible to the Public Agencies. Such indemnification language or language substantially similar thereto, shall also be incorporated in Contractor's contracts with any general contractors and subcontractors in favor of the Public Agencies. These indemnification provisions shall remain in full force and effect and survive the termination and/or expiration of this Contract. Borrower agrees to require any entities with which it contracts to agree to and abide by the above-mentioned indemnification requirements in favor of the Public Agencies, as applicable to each of them.

10.9 Subcontracting

The Contractor may subcontract only those specific portions of the work allowed in the original specifications covered by this Contract with prior written approval by the Authority.

10.10 Assignment

The Contractor shall not assign its rights or delegate its duties under the Contract, or both, whether in whole or in part, without the prior written consent of the Commission, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, Commission consent shall require a written amendment to the Contract, which is formally approved and executed by the parties. Any payments by the Commission to any approved delegate or assignee on any claim under the Contract shall be deductible, at the Commission's sole discretion, against the claims, which the Contractor may have against the Commission. However, the Commission reserves the right to assign this Contract to another public agency without the consent of the Contractor.

Shareholders, partners, members, or other equity holders of the Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is affected in such a way as to give majority control of the Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the

Contract, such disposition is an assignment requiring the prior written consent of the Commission in accordance with applicable provisions of this Contract.

Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without the Commission's express prior written approval, shall be a material breach of the Contract which may result in the termination of the Contract. In the event of such termination, the Commission shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

10.11 Confidentiality of Reports

The Contractor shall keep confidential all reports, information and data received, prepared or assembled pursuant to performance hereunder. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of the Authority.

10.12 Severability

In the event that any provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of the contract and shall in no way affect, impair or invalidate any other provision contained herein. If any such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

10.13 Safety Standards and Accident Prevention

The Contractor shall comply with all applicable Federal, state and local laws governing safety, health and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, reasonably necessary to protect the life and health of employees on the job and the public and to protect property in connection with the performance of this Contract.

10.14 Drug Free Workplace Act of the State of California

The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990.

10.15 Copyright

No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. All documents become the property of the Authority and the Authority holds all the rights to said data.

10.16 Independent Contractor

The Contractor shall perform the services as contained herein as an independent contractor and shall not be considered an employee of the Authority, or under Authority supervision or control. This Contract is by and between the Contractor and the Authority, and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, between the Authority and the Contractor.

10.17 Waiver

No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision shall not be deemed to be a waiver of any breach of the same or any other provision hereof.

10.18 Notices

The Authority shall provide Contractor with notice of any injury or damage arising from or connected with services rendered pursuant to this Contract to the extent that the Authority has actual knowledge of such injury or damage. Authority shall provide such notice within ten (10) days of receiving actual knowledge of such injury or damage.

Notices provided for in this Contract shall be in writing and shall be addressed to the representative of each Party.

Owner:  
Housing Authority  
Maria Badrakhan, Contracting Officer  
2 Coral Circle  
Monterey Park, CA 91755

Contractor:  
M.L. Construction.  
Michael Leshinsky, Owner  
7521 Hampton Avenue #311  
Los Angeles, CA 90046

Notices shall be deemed delivered on the third day after posting by U.S. Mail or when delivered in person with written acknowledgement of the receipt thereof. Authority and Contractor may designate a different address or addresses for notices to be sent by giving written notice of such change of address to all other parties entitled to receive notice.

10.19 Interpretation

No provision of this Contract is to be interpreted for or against either party because that party or that party's legal representative drafted such provision, but this Contract is to be construed as if it were drafted by both parties hereto.

10.20 Employees of Contractor

**Workers' Compensation:** Contractor understands and agrees that all persons furnishing services to the Authority pursuant to this Contract are, for the purposes of workers' compensation liability, employees solely of Contractor. Contractor shall bear sole responsibility and liability for providing workers' compensation benefits to any person for injury arising from an accident connected with services provided to the Authority under this Contract.

**Professional Conduct:** The Authority does not and will not condone any act, gestures, comments or conduct from the Contractor's employees, agents or subcontractors which may be construed as sexual harassment or any other type of activity or behavior that might be construed as harassment. The Authority will properly investigate all charges of harassment by residents, employees, agents or subcontractors and is responsible for taking appropriate action after reports of harassment are received by the Contractor.

10.21 Patent Rights

The Authority will hold all the patent rights with respect to any discovery or invention which arises or is developed in the course of, or under this Contract.

10.22 Notice to Employees Regarding the Federal Earned Income Credit

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal

income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

10.23 Use of Recycled-Content Paper Products

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on the project.

10.24 Contractor Responsibility and Debarment

- A. A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the policy of the Authority to conduct business only with responsible contractors.
- B. The Contractor is hereby notified that the Authority, acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the Authority may, in addition to other remedies provided in the contract, debar the Contractor from bidding on the Authority contracts for a specified period of time not to exceed three (3) years, and terminate any or all existing contracts the Contractor may have with the Authority.
- C. The Authority may debar a contractor if the Board of Commissioners finds, in its discretion, that the Contractor has done any of the following: (i) violated any term of a contract with the Authority, (ii) committed any act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the Authority or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (iii) committed an act or offense which indicates a lack of business integrity or business honesty, or (iv) made or submitted a false claim against the Authority or any other public entity.
- D. If there is evidence that the Contractor may be subject to debarment, the Authority will notify the Contractor in writing of the evidence, which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
- E. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred, and, if so, the appropriate length of time of the debarment. If the Contractor fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the Contractor may be deemed to have waived all rights of appeal.
- F. A record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Commissioners. The Board of Commissioners shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.
- G. These terms shall also apply to subcontractors of the Authority contractors.

#### 10.25 Compliance With Jury Service Program

1. Unless Contractor has demonstrated to the Authority's satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program or that Contractor qualifies for an exception to the Jury Service Program, Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.
2. For purposes of this Section, "Contractor" means a person, partnership, corporation or other entity which has a contract with the Authority or a subcontract with an Authority contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more Authority contracts or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full time" means forty (40) hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the Authority, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of ninety (90) days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for the Authority under the Contract, the subcontractor shall also be subject to the provisions of this Section. The provisions of this Section shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.
3. If Contractor is not required to comply with the Jury Service Program when the Contract commences, Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Contractor shall immediately notify the Authority if Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if Contractor no longer qualifies for an exception to the Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. The Authority may also require, at any time during the Contract and at its sole discretion, that Contractor demonstrate to the Authority's satisfaction that Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor continues to qualify for an exception to the Program.
4. Contractor's violation of this Section of the contract may constitute a material breach of the Contract. In the event of such material breach, the Authority may, in its sole discretion, terminate the Contract and/or bar Contractor from the award of future the Authority contracts for a period of time consistent with the seriousness of the breach.

#### 10.26 Notice to Employees regarding The Safely Surrendered Baby Law

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law,



its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

10.27 Contractor's Acknowledgment of County's Commitment to the Safely Surrendered Baby Law

The Contractor acknowledges that the Authority places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the Authority's policy to encourage all Authority Contractors to voluntarily post the "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used.

10.28 Contractor's Charitable Contributions Compliance

The Supervision of Trustees and Fundraisers for Charitable Purpose Act regulates entities receiving or raising charitable contributions. The "Nonprofit Integrity Act of 2004" (SB 1262, Chapter 919) increased Charitable Purpose Act requirements. By requiring Contractors to complete the Charitable Contributions Certification as included in Attachment C, the Authority seeks to ensure that all Authority contractors that receive or raise charitable contributions comply with California law in order to protect the Authority and its taxpayers. A Contractor that receives or raises charitable contributions without complying with its obligations under California law commits a material breach subjecting it to either contract termination or debarment proceedings, or both.

10.29 American Recovery and Reinvestment Act of 2009

"The Contractor agrees to comply with the "Buy American" of the American Recovery and Reinvestment Act of 2009 provision under Section 1605 which requires the Contractor to utilize "all iron, steel and manufactured goods used in the project be produced in the U.S.

This requirement allows for the following exceptions:

- where HUD determines adherence would be "inconsistent with the public interest",
- where iron/steel/manufactures are not produced in the U.S. in sufficient and available quantities, or
- inclusion of U.S. products would increase overall project cost by 25%.

10.30 Entire Contract

This Contract with attachments constitutes the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Construction Contract on the date and year first written above.

OWNER

HOUSING AUTHORITY OF THE  
COUNTY OF LOS ANGELES, A BODY  
CORPORATE AND POLITIC

By: \_\_\_\_\_

SEAN ROGAN

Title: EXECUTIVE DIRECTOR

Date: \_\_\_\_\_

APPROVED AS TO PROGRAM:

\_\_\_\_\_  
MARIA BADRAKHAN

Title: CONTRACTING OFFICER

Date: \_\_\_\_\_

APPROVED AS TO FORM  
ROBERT KALUNIAN

Acting County Counsel

By: \_\_\_\_\_

Deputy

CONTRACTOR

M.L. CONSTRUCTION

License Number: 400324

By: \_\_\_\_\_

MICHAEL LESHINSKY

Title: OWNER

Date: \_\_\_\_\_

BUSINESS ADDRESS

7521 HAMPTON AVENUE #311

LOS ANGELES, CA 90046

TELEPHONE: (323) 851-8290

FAX:: (323) 962-5091

CORPORATE SEAL

Required Signatures:

\_\_\_\_\_  
If sole proprietor, one signature of sole proprietor.

\_\_\_\_\_  
If partnership, the signature of at least one general partner authorized to sign contracts on behalf of the partnership.

\_\_\_\_\_  
If Corporation, the signatures of those officers required to sign contracts on behalf of the Corporation, and the Corporate Seal.



Department of the Treasury  
Internal Revenue Service

## Notice 1015

(Rev. December 2005)

### Have You Told Your Employees About the Earned Income Credit (EIC)?

#### What Is the EIC?

The EIC is a refundable tax credit for certain workers.

#### Which Employees Must I Notify About the EIC?

You must notify each employee who worked for you at any time during the year and from whom you did not withhold income tax. However, you do not have to notify any employee who claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.

**Note.** You are encouraged to notify each employee whose wages for 2005 are less than \$37,263 that he or she may be eligible for the EIC.

#### How and When Must I Notify My Employees?

You must give the employee one of the following:

- The IRS Form W-2, Wage and Tax Statement, which has the required information about the EIC on the back of Copy B.
- A substitute Form W-2 with the same EIC information on the back of the employee's copy that is on Copy B of the IRS Form W-2.
- Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC).
- Your written statement with the same wording as Notice 797.

If you are required to give Form W-2 and do so on time, no further notice is necessary if the Form W-2 has the required information about the EIC on the back of the employee's copy. If a substitute Form W-2 is given on time but does not have the required information, you must notify the employee within 1 week of the date the substitute Form W-2 is given. If Form W-2 is required but is not given on time, you must give the employee Notice 797 or your written statement by the date Form W-2 is required to be given. If Form W-2 is not required, you must notify the employee by February 7, 2006.

You must hand the notice directly to the employee or send it by First-Class Mail to the employee's last known address. You will not meet the notification requirements by posting Notice 797 on an employee bulletin board or sending it through office mail. However, you may want to post the notice to help inform all employees of the EIC. You can get copies of the notice by calling 1-800-829-3676, or from the IRS website at [www.irs.gov](http://www.irs.gov).

#### How Will My Employees Know If They Can Claim the EIC?

The basic requirements are covered in Notice 797. For more detailed information, the employee needs to see the 2005 instructions for Form 1040, 1040A, 1040EZ, or Pub. 596, Earned Income Credit (EIC).

#### How Do My Employees Claim the EIC?

Eligible employees claim the EIC on their 2005 tax return. Even employees who have no tax withheld from their pay or owe no tax can claim the EIC and get a refund, but they must file a tax return to do so. For example, if an employee has no tax withheld in 2005 and owes no tax but is eligible for a credit of \$799, he or she must file a 2005 tax return to get the \$799 refund.

#### How Do My Employees Get Advance EIC Payments?

Eligible employees who expect to have a qualifying child for 2006 can get part of the credit with their pay during the year by giving you a completed Form W-5, Earned Income Credit Advance Payment Certificate. You must include advance EIC payments with wages paid to these employees, but the payments are not wages and are not subject to payroll taxes. Generally, the payments are made from withheld income, social security, and Medicare taxes. For details, see Pub. 15 (Circular E), Employer's Tax Guide.

# **No shame. No blame. No names.**

**Newborns can be safely given up  
at any Los Angeles County  
hospital emergency room or fire station.**



**In Los Angeles County:  
1-877-BABY SAFE  
1-877-222-9723  
[www.babysafela.org](http://www.babysafela.org)**



**State of California**  
Gray Davis, Governor

**Health and Human Services Agency**  
Grantland Johnson, Secretary

**Department of Social Services**  
Rita Saenz, Director



**Los Angeles County Board of Supervisors**

Gloria Molina, Supervisor, First District

Yvonne Brathwaite Burke, Supervisor, Second District

Zev Yaroslavsky, Supervisor, Third District

Don Knabe, Supervisor, Fourth District

Michael D. Antonovich, Supervisor, Fifth District

This initiative is also supported by First 5 LA and INFO LINE of Los Angeles.

## ATTACHMENT B

### What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents to give up their baby confidentially. As long as the baby has not been abused or neglected, parents may give up their newborn without fear of arrest or prosecution.

### How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially and safely give up a baby within three days of birth. The baby must be handed to an employee at a Los Angeles County emergency room or fire station. As long as the child shows no signs of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, workers will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent.

### What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their newborns within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

### Can only a parent bring in the baby?

In most cases, a parent will bring in the baby. The law allows other people to bring in the baby if they have legal custody.

### Does the parent have to call before bringing in the baby?

No. A parent can bring in a baby anytime, 24 hours a day, 7 days a week so long as the parent gives the baby to someone who works at the hospital or fire station.

### Does a parent have to tell anything to the people taking the baby?

No. However, hospital personnel will ask the parent to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the child. Although encouraged, filling out the questionnaire is not required.

### What happens to the baby?

The baby will be examined and given medical treatment, if needed. Then the baby will be placed in a pre-adoptive home.

### What happens to the parent?

Once the parent(s) has safely turned over the baby, they are free to go.

### Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned by their parents and potentially being hurt or killed. You may have heard tragic stories of babies left in dumpsters or public bathrooms. The parents who committed these acts may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had nowhere to turn for help, they abandoned their infants. Abandoning a baby puts the child in extreme danger. It is also illegal. Too often, it results in the baby's death. Because of the Safely Surrendered Baby Law, this tragedy doesn't ever have to happen in California again.

### A baby's story

At 8:30 a.m. on Thursday, July 25, 2002, a healthy newborn baby was brought to St. Bernardine Medical Center in San Bernardino under the provisions of the California Safely Surrendered Baby Law. As the law states, the baby's mother did not have to identify herself. When the baby was brought to the emergency room, he was examined by a pediatrician, who determined that the baby was healthy and doing fine. He was placed with a loving family while the adoption process was started.

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Every baby deserves a chance for a healthy life. If someone you know is considering abandoning a newborn, let her know there are other options.

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***It is best that women seek help to receive proper medical care and counseling while they are pregnant. But at the same time, we want to assure parents who choose not to keep their baby that they will not go to jail if they deliver their babies to safe hands in any Los Angeles County hospital ER or fire station.***



# **Sin pena. Sin culpa. Sin peligro.**

**Los recién nacidos pueden ser entregados  
en forma segura en la sala de emergencia de  
cualquier hospital o en un cuartel de bomberos  
del Condado de Los Angeles.**



**En el Condado de Los Angeles:**

**1-877-BABY SAFE**

**1-877-222-9723**

**[www.babysafela.org](http://www.babysafela.org)**



**Estado de California**  
Gray Davis, Gobernador

**Agencia de Salud y Servicios Humanos**  
(Health and Human Services Agency)  
Grantland Johnson, Secretario

**Departamento de Servicios Sociales**  
(Department of Social Services)  
Rita Saenz, Directora



**Consejo de Supervisores del Condado de Los Angeles**

Gloria Molina, Supervisora, Primer Distrito

Yvonne Brathwaite Burke, Supervisora, Segundo Distrito

Zev Yaroslavsky, Supervisor, Tercer Distrito

Don Knabe, Supervisor, Cuarto Distrito

Michael D. Antonovich, Supervisor, Quinto Distrito

**Esta Iniciativa tambien esta apollada por First 5 LA y INFO LINE de Los Angeles.**

## ATTACHMENT B

### ¿Qué es la Ley de Entrega de Bebés Sin Peligro?

La Ley de Entrega de Bebés Sin Peligro de California permite a los padres entregar a su recién nacido confidencialmente. Siempre que el bebé no haya sufrido abuso ni negligencia, padres pueden entregar a su recién nacido sin temor a ser arrestados o procesados.

### ¿Cómo funciona?

El padre/madre con dificultades que no pueda o no quiera cuidar de su recién nacido puede entregarlo en forma legal, confidencial y segura, dentro de los tres días del nacimiento. El bebé debe ser entregado a un empleado de una sala de emergencias o de un cuartel de bomberos del Condado de Los Angeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazaletes y el padre/madre recibirá un brazaletes igual.

### ¿Qué pasa si el padre/madre desea recuperar a su bebé?

Los padres que cambien de opinión pueden empezar el proceso de reclamar a su recién nacido dentro de los 14 días. Estos padres deberán llamar al Departamento de Servicios para Niños y Familias (Department of Children and Family Services) del Condado de Los Angeles, al 1-800-540-4000.

### ¿Sólo los padres podrán llevar al recién nacido?

En la mayoría de los casos, los padres son los que llevan al bebé. La ley permite que otras personas lleven al bebé si tienen la custodia legal del menor.

### ¿Los padres deben llamar antes de llevar al bebé?

No. El padre/madre puede llevar a su bebé en cualquier momento, las 24 horas del día, los 7 días de la semana, mientras que entregue a su bebé a un empleado del hospital o de un cuartel de bomberos.

### ¿Es necesario que el padre/madre diga algo a las personas que reciben al bebé?

No. Sin embargo, el personal del hospital le pedirá que llene un cuestionario con la finalidad de recabar antecedentes médicos importantes, que resultan de gran utilidad para los cuidados que recibirá el bebé. Es recomendado llenar este cuestionario, pero no es obligatorio hacerlo.

### ¿Qué ocurrirá con el bebé?

El bebé será examinado y, de ser necesario, recibirá tratamiento médico. Luego el bebé se entregará a un hogar preadoptivo.

### ¿Qué pasará con el padre/madre?

Una vez que los padres hayan entregado a su bebé en forma segura, serán libres de irse.

### ¿Por qué California hace esto?

La finalidad de la Ley de Entrega de Bebés Sin Peligro es proteger a los bebés del abandono por parte de sus padres y de la posibilidad de que mueran o sufran daños. Usted probablemente haya escuchado historias trágicas sobre bebés abandonados en basureros o en baños públicos. Es posible que los padres que cometieron estos actos hayan estado atravesando dificultades emocionales graves. Las madres pueden haber ocultado su embarazo, por temor a lo que pasaría si sus familias se enteraran. Abandonaron a sus recién nacidos porque tenían miedo y no tenían adonde recurrir para obtener ayuda. El abandono de un recién nacido lo pone en una situación de peligro extremo. Además es ilegal. Muy a menudo el abandono provoca la muerte del bebé. Ahora, gracias a la Ley de Entrega de Bebés Sin Peligro, esta tragedia ya no debe suceder nunca más en California.

### Historia de un bebé

A las 8:30 a.m. del jueves 25 de julio de 2002, se entregó un bebé recién nacido saludable en el St. Bernardine Medical Center en San Bernardino, en virtud de las disposiciones de la Ley de Entrega de Bebés Sin Peligro. Como lo establece la ley, la madre del bebé no se tuvo que identificar. Cuando el bebé llegó a la sala de emergencias, un pediatra lo revisó y determinó que el bebé estaba saludable y no tenía problemas. El bebé fue ubicado con una buena familia, mientras se iniciaban los trámites de adopción.

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Cada recién nacido merece una oportunidad de tener una vida saludable. Si alguien que usted conoce está pensando en abandonar a un recién nacido, infórmele qué otras opciones tiene.

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**Es mejor que las mujeres busquen ayuda para recibir atención médica y asesoramiento adecuado durante el embarazo. Pero al mismo tiempo, queremos asegurarnos a los padres que optan por no quedarse con su bebé que no irán a la cárcel si dejan a sus bebés en buenas manos en cualquier sala de emergencia de un hospital o en un cuartel de bomberos del Condado de Los Angeles.**

## ATTACHMENT C

# BACKGROUND AND RESOURCES: CALIFORNIA CHARITIES REGULATION

There is a keen public interest in preventing misuse of charitable contributions. California's "Supervision of Trustees and Fundraisers for Charitable Purposes Act" regulates those raising and receiving charitable contributions. The "Nonprofit Integrity Act of 2004" (SB 1262, Chapter 919) tightened Charitable Purposes Act requirements for charitable organization administration and fundraising.

The Charitable Purposes Act rules cover California public benefit corporations, unincorporated associations, and trustee entities. They may include similar foreign corporations doing business or holding property in California. Generally, an organization is subject to the registration and reporting requirements of the Charitable Purposes Act if it is a California nonprofit public benefit corporation or is tax exempt under Internal Revenue Code § 501(c)(3), and not exempt from reporting under Government Code § 12583. Most educational institutions, hospitals, cemeteries, and religious organizations are exempt from Supervision of Trustees Act requirements.

Key new Charitable Purposes Act requirements affect executive compensation, fundraising practices and documentation. Charities with over \$2 million of revenues (excluding grants and service-contract funds a governmental entity requires to be accounted for) have new audit requirements. Charities required to have audits must also establish an audit committee whose members have no material financial interest in any entity doing business with the charity.

Organizations or persons that receive or raise charitable contributions are likely to be subject to the Charitable Purposes Act. A bidder/proposer on Commission and/or Housing Authority contracts must determine if it is subject to the Charitable Purposes Act and certify either that:

- It is not presently subject to the Act, but will comply if later activities make it subject, or,
- If subject, it is currently in compliance.

## RESOURCES

The following resource references are offered to assist bidders/proposers who engage in charitable contributions activities, however, each bidder/proposer is responsible to research and determine its own legal obligations and properly complete the Charitable Contributions Certification form.

In California, supervision of charities is the responsibility of the Attorney General, whose website, <http://caag.state.ca.us/>, contains much information helpful to regulated charitable organizations.

### 1. LAWS AFFECTING NONPROFITS

The "Supervision of Trustees and Fundraisers for Charitable Purposes Act" is found at California Government Code §§ 12580 through 12599.7. Implementing regulations are found at Title 11, California Code of Regulations, §§ 300 through 312. In California, charitable solicitations ("advertising") are governed by Business & Professions Code §§ 17510 through 17510.95. Regulation of nonprofit corporations is found at Title 11, California Code of Regulations, §§ 999.1 through 999.5. (Amended regulations are pending.) Links to all of these rules are at: <http://caag.state.ca.us/charities/statutes.htm>.

### 2. SUPPORT FOR NONPROFIT ORGANIZATIONS

Several organizations offer both complimentary and fee-based assistance to nonprofits, including in Los Angeles, the *Center for Nonprofit Management*, 606 S. Olive St #2450, Los Angeles, CA 90014 (213) 623-7080 <http://www.cnmsocal.org/>, and statewide, the *California Association of Nonprofits*, <http://www.canonprofits.org/>. Both organizations' websites offer information about how to establish and manage a charitable organization.

The above information, including the organizations listed, is for informational purposes only. Nothing contained in this sub-section shall be construed as an endorsement by the Commission of such organizations.





# CHARITABLE CONTRIBUTIONS CERTIFICATION

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Internal Revenue Service Employer Identification Number

\_\_\_\_\_  
California Registry of Charitable Trusts "CT" number (if applicable)

The Nonprofit Integrity Act (SB 1262, Chapter 919) added requirements to California's Supervision of Trustees and Fundraisers for Charitable Purposes Act, which regulates those receiving and raising charitable contributions.

CERTIFICATION		
Proposer or Contractor has examined its activities and determined that it does not now receive or raise charitable contributions regulated under California's Supervision of Trustees and Fundraisers for Charitable Purposes Act. If Proposer engages in activities subjecting it to those laws during the term of a Community Development Commission (CDC) and/or Housing Authority contract, it will timely comply with them and provide the CDC and/or Housing Authority a copy of its initial registration with the California State Attorney General's Registry of Charitable Trusts when filed.	YES ( )	NO ( )
<b>OR</b>		
Proposer of Contractor is registered with the California Registry of Charitable Trusts under the CT number listed above and is in compliance with its registration and reporting requirements under California law. Attached is a copy of its most recent filing with the Registry of Charitable Trusts as required by Title 11 California Code of Regulations, sections 300-301 and Government Code sections 12585-12586.	YES ( )	NO ( )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title (please type or print)

## ATTACHMENT D

Form **W-9**  
(Rev. January 2003)  
Department of the Treasury  
Internal Revenue Service

# Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶	<input type="checkbox"/> Exempt from backup withholding
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

**Note:** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
or								
Employer identification number								

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign  
Here

Signature of  
U.S. person ▶

Date ▶

## Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

**Note:** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Foreign person.** If you are a foreign person, use the appropriate Form W-8 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

## Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

- The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
- The treaty article addressing the income.
- The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
- The type and amount of income that qualifies for the exemption from tax.
- Sufficient facts to justify the exemption from tax under the terms of the treaty article.